

MONTANA LEGISLATIVE HISTORY

Chapter 250 19 62

Bill H 56 S _____ Original bill & history C

H. Committee on Business & Industry

Hearing Date(s) Jan 16 ☒ C

Jan 21 ☒ C

_____ C

_____ C

Date Out Jan 21 ☒ C

S. Committee on State Administration

Hearing Date(s) _____ C

minutes do _____ C

not exist _____ C

_____ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

BUSINESS & INDUSTRY

The Business & Industry Committee met January 16, 1963 on adjournment in the Governor's Reception Room. Chairman Dykstra called the meeting to order, with 14 members present and 1 excused.

HOUSE BILL 56. Representatives of the Montana Association of Real Estate Boards appeared before the Committee as proponents to HB56. (Exhibit "A" includes a partial list of persons attending the meeting)

Mr. Forrest Crum, Representative, Yellowstone County, was the first to speak before the committee. He pointed out that this was a bill to provide protection to buyers and sellers of real estate in that the real estate profession would be required to meet a high standard before licensing.

He stated he felt this was a model bill since it contains the best features of the laws of 49 different states that now have such regulations in effect.

He went on to say that there would be an administering commission consisting of two laymen (not in the real estate profession); two experienced real estate businessmen; and the fifth member of the commission would be the chairman and the Commissioner of Agriculture and Real Estate. This would be a bi-partisan commission.

Mr. Crum pointed out the 'grandfather' clause in the bill. He stated that this provides that any person now making a career of real estate may be relicensed, after this law goes into effect, within 90 days. After that time they would be required to pass the qualification tests.

In general Mr. Crum pointed out that ^{this} bill would upgrade the real estate profession.

MR. BRUCE NELSON In essence Mr. Nelson presented the same information to the committee. He stated this would provide some regulation of the real estate profession that has been badly needed. He went on to say that when there is a complaint received regarding a real estate broker there is nothing that can be done to correct the matter, but with regulation all real estate brokers would be qualified and highly reputable.

MR. AL MASSMAN Mr. Massman pointed out that he had had six years in the real estate profession. (See attached Exhibit "B" for the remarks in detail of Mr. Massman.)

MR. JOHN MADDOX Mr. Maddox informed the committee that due to a prior commitment Mr. Lowell Purdy, Commissioner of Agriculture and Real Estate; and Miss Marie Leslie, Deputy Commissioner of Real Estate were unable to appear to testify before the committee (See Exhibit "C" for letter to committee from Mr. Purdy.)

There followed a short question and answer period. Mr. Dykstra that Mr. Haughey, Representative, Yellowstone County, would like to present the Committee with several suggested amendments to HB56. Mr. Dykstra stated that in all fairness the committee could take no action on this subject until such time as said amendments are presented to the committee.

The gentlemen who appeared in favor of HB56 then retired from the meeting.

The Committee members unanimously agreed to further discuss and consider HB56 after the amendments were submitted. They also felt that Mr. Purdy should appear before the Committee before any action is taken.

HOUSE BILL 61. House Bill 61 is a bill introduced by the Committee on Business & Industry to direct the Commissioner of Agriculture to transfer the elevator storage fund to the general fund.

Motion was made by Tooke, seconded by Good, that HB61 do pass. Motion unanimously carried.

HOUSE BILL 62. HB62 provides for a corporate surety bond for operation of a public warehouse. This bill was also introduced by the Committee on Business & Industry.

Upon motion made by Good, seconded by Swanz, that HB62 do pass. Motion carried unanimously.

HOUSE BILL 63. An act to make confidential the warehousemen reports to Commissioner of Agriculture. HB63 submitted by Committee on Business & Industry.

Upon motion made by Tooke, seconded by Welch, that HB63 do pass. Motion carried unanimously.

There being no further business to come before the Committee the meeting adjourned.

DAK. LEGISLATURE
Chairmen.

JAN. 16, 1963, Hearing
House Committee of Business and Industry

Appearing FOR House Bill 56, to qualify
Real estate salesman - Brokers:

George E. Hansen, Billings, Montana chairman
of the National Institute of Real Estate Brokers;
main objective to educate members to serve the public better.

D. (Al) Massman, presently ^{Mont} Fed. Housing Admin.
Director, formerly 6 yrs in Real Estate in
Great Falls, expect to be again in R/E Business

D. W. Woods Treasure State Realty Helena
Sheldon Harding - Shelly Harding Realty Helena
Douglas F. Peterson Prudential Realty Helena
Michael J. Pado Helena Real Estate Helena
Geo Mingle ~~Helena~~ Realty Helena

O. A. Sokoloski Missoula - Security Agency
President of Missoula Board of Realtors
Past Pres. of MONT. ASSOC. OF REALTORS

DONALD C. Mullen - Mullen Realty Miles City

President Eastern Montana Board of Realtors

FRANK GRIZZIN - HELENA GRIZZIN REALTY

H. D. Kinnellyn Kinnellyn Agency Billings Mont.
"Allen" E. Scott Scott Realty Great Falls

J. P. Brennan Helena

Edison Peterson Great Falls Hunt-Burgess & Realty
W. T. M. T. T. & R. W.

M. C. Carbo. Carbo Realty Helena State Director
James K. Clark = Dickson Thomas and Merrill 2nd Vice State Assoc.
Warren P. Hall, Hall and Hall, Inc. Director, Billings Board
of Realtors Mortgage Bank

W. O. Wright Hall and Hall, Inc. Realtor
Billings

T. H. Horras Horras Realty - Director of Montana
Assoc. of Realtors
Tom Wather Tom Wather & Assoc. Pres. G. F. Board
State Legislative
K. H. Glynn Harry Mont. Chairman
since R. Nelson Great Falls Vice Pres. Montana Ass.
of Realtors
Pres. " " "

Carl C. Payne Great Falls Realty Co. Secretary - Treasurer
LES COLBY MISSOULA Montana State Realtors Ass.

Ronald W. Young POLSON

Earl Hansen Billings Mont.

James T. Kalsgard Polson, Mont.

M E M O

RE: HEARING WEDNESDAY, JANUARY 16, 1963

TO THE HOUSE COMMITTEE ON BUSINESS AND INDUSTRY; DAN DYKSTRA, CHAIRMAN

APPEARING HERE TODAY, OR MAKING PRESENTATIONS FOR THE RECORD, IN SUPPORT OF HOUSE BILL 56, WHICH WOULD REQUIRE QUALIFICATION OF REAL ESTATE SALESMEN AND BROKERS, ARE THE FOLLOWING PERSONS:

MR. BRUCE A. NELSON OF 10 12th South, Great Falls, president of the Montana Association of Real Estate Boards.

MR. KENNETH R. FLYNN, of Havre, vice president of the Montana Association of Real Estate Boards.

MR. J. R. (BOB) CLARK, of Missoula 2nd vice president of the Montana Association of Real Estate Boards.

MR. CARL C. PAYNE, of Great Falls, secretary-treasurer, of the Montana Association of Real Estate Boards.

MR. TOM MATHER, of Great Falls, Legislative chairman of the Montana Association of Real Estate Boards.

MR. TOM MADDOX, of Helena, executive Secretary of the Montana Association of Real Estate Boards.

(In addition, other local or city area Association board officers and members, whose names and addresses are attached.)

MR. ALBERT J. MASSMAN, of Helena (Great Falls), MONTANA DIRECTOR OF THE FEDERAL HOUSING ADMINISTRATION.

MR. C. LOWELL PURDY, of Helena (Havre), STATE COMMISSIONER OF AGRICULTURE AND REAL ESTATE; MISS MARIE M. LESLIE, of Helena, DEPUTY COMMISSIONER OF REAL ESTATE. (Mr. Purdy and Miss Leslie were scheduled to fill prior commitments for interviews by the legislative budgetary committees, and in the event they could not appear they submitted a letter ENDORSING THE HOUSE BILL 56).

MR. TED HORRAS, of Great Falls, vice chairman of the MONTANA HOME BUILDING ADVISORY COUNCIL.

ALSO SUBMITTED FOR CONSIDERATION ARE THE FOLLOWING:

A statement for the legislation by BRUCE A. NELSON, president of the Montana Association of Real Estate Boards.

A statement for the legislation from a REPRESENTATIVE OF THE ABSTRACTORS F. B. "Fritz" WEED, Vice President and Manager of the

Helena Abstract and Title Co.

A WALL STREET JOURNAL analysis of the real estate business, CITING A NEED FOR STRONGER REGULATORY LAWS.

A SUMMARY OF LEGAL RESEARCH INTO THE NECESSITY FOR GRANDFATHER PROVISIONS IN REGULATORY LEGISLATION.

A letter from a BUILDING AND LOAN REPRESENTATIVE, R. C. Wetherell of Bozeman.

HOUSE BILL 56

HOUSE BILL 56 PROVIDES FOR THE PROTECTION OF BUYERS AND SELLERS OF HOMES, FARMS AND RANCHES AND FOR THE UPGRADING OF THE REAL ESTATE BUSINESS BY REQUIRING TRAINING AND QUALIFYING TESTS FOR REAL ESTATE PEOPLE.

THE HOUSE SPONSORS ARE REPRESENTATIVES FORREST H. CRUN OF YELLOWSTONE COUNTY, AND LEONARD G. BASHOR OF TOOLE COUNTY. THUS, THIS BILL ORIGINATES WITH THE REAL ESTATE INDUSTRY, AS WELL AS FROM BOTH SIDES OF THE LEGISLATURE.

THIS BILL CAN BE CALLED A MODEL BILL OF ITS KIND, BECAUSE IT INCLUDES THE BEST FEATURE OF LAWS WHICH ARE WORKING SUCCESSFULLY IN 47 STATES. IN ADDITION, THE OFFICIALS OF OTHER STATES WERE CHECKED FOR THEIR CONSTRUCTIVE CRITICISMS AND ATTORNEYS RESEARCHED THE SUBJECT THOROUGHLY BEFORE DRAFTING THE BILL. FINALLY, THE SUGGESTIONS OF MANY MONTANA LEGISLATORS WERE INCORPORATED TO OBTAIN A BILL WHICH THE LEGISLATURE WOULD BE PROUD TO ENACT.

THIS BILL IS ORIENTED TO THE GENERAL PUBLIC'S NEED. IN FACT, IT CONTEMPLATES THAT TWO MEMBERS OF THE ADMINISTERING COMMISSION BE LAYMEN OR PEOPLE NOT IN THE REAL ESTATE BUSINESS. IT ALSO HAS TWO COMMISSIONERS WHO WOULD BE EXPERIENCED REAL ESTATE BUSINESSMEN. THE FIFTH COMMISSIONER WOULD BE THE CHAIRMAN--THE STATE COMMISSIONER OF AGRICULTURE AND REAL ESTATE.

SAFEGUARDS FOR THE PUBLIC GENERALLY ARE CONSIDERED IN PROVIDING THAT THIS REAL ESTATE COMMISSION BE BIPARTISAN. NOT MORE THAN THREE MEMBERS, INCLUDING THE CHAIRMAN, CAN BE FROM THE SAME

POLITICAL PARTY.

FURTHER, PUBLIC ORIENTATION IS IN THE PROVISION FOR RECOURSE FROM GRIEVANCES OR ACTUAL DAMAGES THROUGH THE COMMISSION, AND THE COURTS.

ON THE OTHER HAND, THE REAL ESTATE MEN OR WOMEN WHO MAY BE UP FOR LICENSE SUSPENSION OR REVOCATION BY THE COMMISSION ALSO HAVE SAFEGUARDS. THEY HAVE RIGHTS OF APPEAL TO THE DISTRICT COURTS FROM ANY ADVERSE COMMISSION ACTION.

THIS BILL INCLUDES A 'GRANDFATHER' CLAUSE. THIS PROVIDES THAT PERSONS WHO NOW ARE MAKING A LEGITIMATE CAREER IN REAL ESTATE MAY BE RE-LICENSED WITHIN 90 DAYS AFTER INACTIVITY OF THE LEGISLATION. IF THEY DO NOT RE-LICENSE IN THAT TIME THEY WOULD HAVE TO BE TREATED AS NEWCOMERS AND STUDY THE REQUIREMENTS AND THEN PASS THE QUALIFICATION TEST.

THERE ARE THOSE WHO OPPOSE THE "GRANDFATHER" CLAUSE. BUT HISTORICALLY, LEGISLATURES AND THE CONGRESS HAVE PROVIDED FOR GRANDFATHER CLAUSES BECAUSE YOU CANNOT LEGISLATE ANYONE OUT OF BUSINESS. THE COURTS HAVE HELD THAT RETROACTIVE COVERAGE OR EXCLUSION SHALL NOT BE LEGISLATED.

THIS IS NOT INTENDED TO SHUT OUT NEW COMPETITION. THE BILL PROVIDES FOR EDUCATION OF APPLICANT REAL ESTATE PEOPLE SO THEY WILL QUALIFY. IT IS NOT CONTEMPLATED TO UPGRADE THE REAL ESTATE PERSONNEL OVERNIGHT BUT TO ACCOMPLISH THIS IN A TRANSITION PERIOD OF THE NEXT FEW YEARS, WHEN THE UNQUALIFIED PEOPLE WILL PASS FROM THE BUSINESS THROUGH INABILITY TO COMPETE, OR RETIREMENT. THE TRAINED PEOPLE COMING INTO THE BUSINESS WILL TAKE THEIR PLACES.

THE SENTIMENT OF THE HOUSE AND SENATE HAS BEEN POLLED INFORMALLY AND AN OVERWHELMING MAJORITY OF THIS SAMPLING CALLS FOR KEEPING THE GRANDFATHER CLAUSE IF THE BILL IS TO PASS. AND EVEN THOSE WHO QUESTION RETAINING THE GRANDFATHER CLAUSE CONCEDE THAT THIS IS GOOD LEGISLATION, AND LONG OVERDUE. WE ASK THOSE WHO QUESTION THE GRANDFATHER CLAUSE TO GIVE IT LENIENT CONSIDERATION

WITH A VIEW TO THE OVER-ALL LARGER VIEW THAT THIS LEGISLATION IS NEEDED.

JUST ANOTHER WORD ABOUT THE GRANDFATHER PROVISION. . .ANY ONE WHO IS RE-LICENSED UNDER THIS CLAUSE MUST COME UP TO THE HIGH STANDARDS THE REAL ESTATE BUSINESS DEMANDS, OR HE WILL BE SUBJECT TO 20 SPECIFIC QUALIFYING FACTORS UNDER THE LAW. IF ANY PRESENT REAL ESTATE SALESMAN OR BROKER RE-LICENSED UNDER THE GRANDFATHER CLAUSE IS OPERATING CONTRARY TO ANY OF THESE 20 STANDARDS, UNDER THIS LAW HE IS SUBJECT TO SUSPENSION OR REVOCATION OF HIS LICENSE. AND THE INDUSTRY IS PLEDGED TO POLICE ANY SUCH VIOLATORS AMONG ITS RANKS.

NO BUILD-UP OF A SEPARATE FUND would BE POSSIBLE UNDER THIS LEGISLATION. EACH YEAR END WHEN THE BOOKS ARE BALANCED, ALL MONEY IN THIS COMMISSION FUND BEYOND A BARE OPERATING FEE, MUST BE GIVEN FORTHWITH TO THE STATE GENERAL FUND. IN ADDITION, TO THIS BOTTOM DRAIN ON THE FUND, THE BILL CALLS FOR THE GENERAL FUND TO RECEIVE A MONTHLY DEPOSIT RIGHT OFF THE TOP OF ALL SERVICE FEES PAID TO THE REAL ESTATE COMMISSION. THE BILL PROVIDES FOR PAYMENT TO THE GENERAL FUND OF 5 PER CENT OF THE ANNUAL LICENSE MONEY, AND 12-1/2 PER CENT OF ALL OTHER SERVICE CHARGES MADE TO THE INDUSTRY.

IN OTHER WORDS, THE INDUSTRY WILL NOT ONLY FOOT THE BILL FOR THE ADMINISTRATION OF THIS HOME BUYERS' PROTECTION BILL, BUT IT WILL BE PLEASED TO MAKE CONTINUING CONTRIBUTIONS TO THE GENERAL FUND.

STILL ON ECONOMY POINTS....THE COMMISSION SERVES WITHOUT SALARY. BUT MEMBERS WOULD RECEIVE \$7.50 FOR EACH HALF-DAY OF DUTY, AND ACTUAL EXPENSES.

Remarks of A. J. Massman on January 16, 1963 before the House

Business and Industry Committee in support of:

House Bill 56.

Mr. Chairman, Committee Members:

Although at this time it is my honor to be serving Montana as Director of the Federal Housing Administration, I am here in my own behalf as a private citizen of Montana. I am officially on leave of my job with FHA.

After over 15 yrs. with the Federal Government, I resigned from Federal Housing in 1955 and entered the real estate business in Great Falls. After working 2 yr. term as a salesman, I operated my own real estate business for 4 years until I was appointed FHA Director in March of 1961.

I love the real estate business. I do not expect to spend the rest of my years until retirement, in the Government service. I expect to return to the real estate business. I urge the enactment of an adequate real estate license qualification law.

Sirs -- I have studied House Bill 56. I solicit and urge your favorable consideration of this Bill. The people of Montana need and expect "professionalism" from real estate licensees. Too often our people do not get professional service from real estate licensees. I feel this is because the present license law, for all practical considerations, established no qualifications standards, worthy of mention. Almost any person can now obtain a real estate license. I ask you as Representatives of the people of Montana, to consider and envision the "services," and, "answer to questions," which the public expects from real estate licensees. These "services" and "answers" cannot

be rendered properly and adequately except by a high degree of professionalism^{on} the part of a licensee. I say that the public is not going to get the high ~~degree~~^{degree} of professional which they expect without an adequate qualification law such as House Bill 56.

To assist you, I have prepared, as an Extension of these Remarks, a brief list of a few of the "services" and "question for answer" which the public posed to me while I was in the real estate business. I hope this will be helpful. With a good real estate license qualification law, an applicant could be tested to determine whether, if licensed, ^{he} could perform professionally as expected by the public. I feel House Bill 56 will accomplish this. I urge it's enactment. Thank you.

A. Massman

Extension of Remarks of A. J. Masaman January 16, 1963 before the
House Business and Industry Committee in support of:

House Bill 56.

Mr. Chairman, Committee Members:

The following problems and questions are, representative of those posed to me while operating my real estate business.

1. A business man wants help to find a good location, at a reasonable price, for a drive-in hamburger stand -- but as a stranger in town doesn't know what real estate prices are, local business and market conditions, local traffic patterns, and merchandising habits.
2. An investor wants help to locate a good site for a new business office building -- but doesn't want to expose his interest to sellers -- and further more is not completely acquainted with lot prices.
3. An old crippled widow has undeveloped business property for sale. What is it worth? What terms should be offered to a purchaser since she does not need cash funds immediately?
4. "We need a 3 BR home and have \$700 cash; What do you have for sale?" These customers must identify their needs and limitations much more fully. Problems yet to be resolved concern school; church; shopping center; where does the wage earner work; is this a 2 ear family; does the wife work;

what is the family income; are they likely to be transferred.

5. "My house is too small, should I remodel and enlarge my house or sell it and buy a larger house? "
6. "How should I sell my farm to be sure it "stays sold" and yet hold my income tax liability to the minimum?"
7. An attorney and / or administrator of an estate wants advice as to how best to dispose of and liquidate certain real estate property included in an estate.

It is my opinion that an adequate qualification law can provide for testing an ~~applicant~~ applicant's knowledge on the following matters concerned with :

1. the sale, transfer, and leasing of real estate
2. accounting matters concerned with the closing of transactions and the preparation of appropriate statements covering the handling of all monies
3. the possibility of and dangers of mechanics and materialmens liens
4. easements and encroachments affecting a purchasers title or use of the property acquired
5. accurate identity of property lines
6. adverse rights established by public use, etc.
7. accuracy of legal descriptions
8. assurance of good marketable Title to Purchase
9. Need for use of professional people such as attorneys, engineers, etc.

10. Professional ethical matters pertaining to the public
and to fellow-practitioners.

It is my opinion after studying House Bill 56 that it will be very
helpful in raising the standards of the real estate profession to
service Montana people better. Thank You,


A. J. Massman



STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

C. LOWELL PURDY
COMMISSIONER

HELENA, MONTANA

January 16, 1963

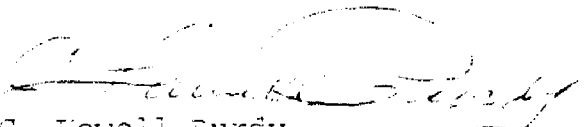
Representative Dan Dykstra
Chairman, Business & Industry Committee
House of Representatives
Capitol Building
Helena, Montana

Dear Mr. Dykstra:

Due to the necessity of my appearing before the appropriations subcommittee today in regards to the budget for my department, it will be impossible for me to attend the hearing on House Bill No. 56. However, I do wish to take this means of expressing my support and also the support of Miss Leslie, Deputy Commissioner of Real Estate, for this legislation.

The bill has been carefully prepared and provides for a written examination for the procuring of a real estate brokers or salesman license. ~~Forty-four~~ ^{Forty} of the other states have similar licensure procedures and the bill provides necessary exemptions for sales by owners, services of an attorney at law in the performance of his duty as such and other necessary exemptions. The intent of the legislation is not to preclude the entrance of new people into the real estate field, but rather to insure their having at least a basic knowledge of real estate procedure for the protection of the buyer and seller of real property and the upgrading of the real estate standards of Montana. I am sure your committee will give this legislation fair and just consideration.

Respectfully submitted,


C. Lowell Purdy
Commissioner of Agriculture

CLP:mk

BUSINESS & INDUSTRY

The Business & Industry Committee met January 21, 1963 on adjournment. Chairman called the meeting to order, with 14 members present and one excused.

Mr. Alex Blewett, Representative from Cascade County and Mr. Haughey Representative from Yellowstone County appeared before the Committee with regard to House Bill 56.

HOUSE BILL 56. Mr. Alex Blewett appeared before the committee as an ex-officio member of the Business & Industry Committee. He stated the real estate professional had asked his assistance in drawing up HB56.

Mr. Haughey appeared before the Committee and presented several proposed amendments to the bill.

Beam made motion that any amendment to change the "grandfather clause" be omitted from HB56. (Exhibit B) Seconded by Good. Motion carried.

Beam made motion that any amendment relative to the practice of law be omitted from HB56. (Exhibit A) Motion seconded by Good. Motion carried.

Motion made by Reardon, seconded by Beam that the \$5,000.00 bond be increased to \$10,000.00. Motion carried unanimously.

Motion made by Beam, seconded by Good, that the amendment be added, page 10 of the mimeographed bill, line 17 after the word "surety," "or both the broker and any salesman employed directly or indirectly by such broker and their respective sureties." Motion carried unanimously.

Beam made motion that House Bill 56 do pass as amended. Seconded by Good. Motion carried.

HOUSE BILL 134. Regarding the performance of annual work on lodes or placer claims. This bill would amend the law so as to include any hydrolic work, etc. as assessable work.

Motion made by Bashor, seconded by Smiley that House Bill 134. do pass. Motion carried.

HOUSE BILL 70. Smiley moved that House Bill 70 do not pass. Seconded by Casey. Motion carried.

HOUSE BILL 130. After a great deal of discussion among the committee members it was felt that since this is such a controversial bill that it should be passed out of committee with recommendation "Printed and Placed on General Orders." Motion made by Welch, seconded by Reardon that House Bill 130 be passed out of committee with recommendation "Printed and Placed on General Orders." Motion carried.

There being no further business to come before the committee the meeting adjourned.

"21. Performing a legal service or services in connection with real estate transactions which in the public interest should be performed by an attorney-at-law, or in any other way engage in the unauthorized practice of law."

21. Drawing deeds, mortgages, assignments, bills of sale, contracts, except preliminary buy or sell agreement entered into between buyer, seller and agent, releases or satisfaction of mortgages, leases, or any instrument conveying or encumbering the title to real or personal property.

Effective
immediately.

Section 2. This act is effective on its passage and approval.

Approved March 11, 1963.

CHAPTER NO. 250

An Act Providing for the Application, Qualifications, Bonding, Licensing, Supervision and Regulation of Real Estate Brokers and Real Estate Salesmen; Providing for the Collection and Disposition of Fees; Providing for a State Real Estate Commission and Defining its Powers and Duties; Providing Reciprocity of Licenses, Examination and Consent to Suit by Non-residents; Providing Grounds for Denial, Revocation or Suspension of Licenses; Providing Hearing Procedure; Providing for Appeals From Decisions of the Commission and District Court; Prescribing Fees and Their Disposal; Providing Penalties for the Violation of This Act or of any Rule or Regulation Issued by the Commission; Containing a Severability Clause; Repealing Sections 66-1901 Through and Including 66-1923, Revised Codes of Montana, 1947, as Amended by Chapter 129, Laws of 1957, Chapter 130, Laws of 1957, Chapter 131, Laws of 1957, and Chapter 132, Laws of 1957; Providing Section 94-1822 of the Revised Codes of Montana of 1947 shall Not be Amended, Modified, or Repealed by This Act; and Containing an Effective Date for This Act; and Repealing All Acts and Parts of Acts in Conflict Herewith.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Title—license required.** This act shall be known and may be cited as the real estate license act of 1963. From and after the effective date of this act it shall be unlawful for any person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without first having procured a license as such broker or salesman, as provided in this act.

Title—
Real Estate
License Act—
real estate
broker or salesman
must be licensed.

Section 2. **Definitions.** As used in this act, the following terms shall have the following meanings except where the context clearly indicates that another meaning is intended:

Definitions.

(a) The term "real estate" shall include leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

"Real estate."

(b) The term "broker" shall include any person or organization who for another, or for a fee, commission or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes any person or organization employed by or on behalf of the owner or owners, or lessor or lessors of real estate, to conduct the sale, leasing, subleasing or other disposition thereof at a salary or for a fee, commission or any other consideration; it also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, lease or other disposition of real estate within this state through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both.

"Broker."

(c) The term "salesman" shall include any person who, for a salary, commission or compensation of any kind, is employed, either directly, indirectly, regularly or occasionally, by any real estate broker to sell, purchase or negotiate for the sale, purchase, exchange or renting of any real estate.

"Salesman."

(d) The term "person" shall mean and include individuals, partnerships, associations and corporations, foreign and domestic.

"Person."

(e) The term "he" shall mean and include "she" and "it". The term "his" shall mean and include "her" and "its".

Meaning of terms.

Single act.

Section 3. **Exempted classes.** A single act performed, for a commission or compensation of any kind, in the buying, selling, exchanging, leasing or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this act, however, shall not (1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself, or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor, or (2) apply to any person acting as attorney in fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting or leasing of any real estate, or (3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law, or (4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter, or (5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust or will, or an auctioneer, employed by a receiver, trustee in bankruptcy, administrator, executor or trustee, to aid and assist in conducting a public sale held by any such officer, or (6) apply to public officials in the conduct of their official duties, or (7) apply to any person, partnership, association or corporation, foreign and domestic, performing any act with respect to prospecting, leasing, drilling or operating land for hydrocarbons, and hard minerals, or disposing of any hydrocarbons, hard minerals or mining rights therein, whether upon a royalty basis or otherwise.

Section 4. **Real estate commission—members—districts—powers and duties—employees—compensation—disposition of fees.**

(a) There is hereby created the Montana real estate commission, hereinafter referred to as the "commission", to consist of the commissioner of agriculture, who shall act as chairman of the commission, and four members, each of whom shall be a resident of this state, at least

Real estate
commission
created—
qualifications—
chairman.

two of whom shall be active and licensed as real estate brokers and who have been actively engaged in the real estate business as a broker in this state for not less than five (5) continuous years prior to the date of appointments. The four members of the commission, other than the chairman, shall be appointed by the governor as follows:

Appointment
by governor.

Not more than two members shall be from the same congressional district, with no more than one eligible real estate broker residing in the same congressional district, and not more than three persons on the commission, including the chairman, shall be of the same political party. Upon the initial appointments, the first congressional district's two members shall be appointed for one year and the other for three years, and the second congressional district's members shall be appointed for two years and four years, respectively. Thereafter the term of each member shall be for four (4) years and until their successors are appointed and qualify. In the event of a vacancy on the commission, the governor shall fill the vacancy by appointing a resident from the same district as the member whose office has become vacant, to serve as a member for the unexpired term. If a member takes up residency in a district different from the one in which he resided at the time of appointment, he automatically vacates his commission position. Upon the qualification of the members appointed, the commission shall do all things necessary and proper for carrying out the provisions of this act, and shall from time to time promulgate rules and regulations not inconsistent herewith and make necessary amendments thereto.

Terms of office

Vacancy.

(b) The chairman shall cause to be kept a record of all proceedings, transactions, communications and official acts of the commission, be custodian of all the records of the commission and shall cause to be performed such other duties as the commission upon the written request of two or more members of the commission or at such other times as the chairman may in his discretion deem necessary. The commission is authorized to employ such employees as may be necessary to properly carry out the provisions of this act, to fix the salaries of such employees, and to make such other expenses

Record of
proceedings—
duties of chairman.

Employees.

Office.

ditures as are necessary to properly carry out the provisions of this act. The office of the commission shall be maintained in the office of the commissioner of agriculture at the state capitol at Helena, and all files, records and property of the commission shall at all times be and remain therein. Neither the chairman nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

Compensation—
per diem and
expenses.

(c) Each member of the commission shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents (\$7.50) and his actual and necessary expenses incurred in the performance of any other duties provided for by the commission.

Seal—evidence—
public inspection.

(d) The commission shall adopt a seal of such design as it shall prescribe. Copies of all records and papers in the office of the commission, duly certified by the chairman and authenticated by the seal of the commission, shall be received in evidence in all courts with like effect as the original. All records of the commission shall be open to public inspection under such reasonable rules and regulations as it shall prescribe.

Fees—deposit—
apportionment.

(e) All fees collected under the provisions of this act shall be deposited at least monthly with the state treasurer and said funds so deposited shall be apportioned as follows:

Five per cent (5%) from each examination fee and twelve and one-half per cent (12½%) from all other fees collected shall be deposited to the credit of the general fund of the state to reimburse the state for its costs in administering this act.

Expenditures—
warrants—
accounting.

The balance of said fees collected by the commission shall be deposited to the credit of the earmarked revenue fund and are hereby appropriated for the purposes of carrying out the provisions of this act. All expenditures from said funds by the commission under the provisions of this act shall be certified and approved by the chairman of the commission and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The commission shall provide a system of accounting which shall

show the amount of money received therefor, and also an itemized statement of the expenses in connection therewith.

The commission shall have the power to make orders concerning the disbursement of the moneys in said earmarked revenue fund, including the payment of compensation and expenses of its members, clerks, employees, and board members.

Power to order
disbursements.

(f) The commission shall have the power and authority to promulgate rules and regulations governing and regulating its internal operation and business meetings. The commission shall also have the power and authority to promulgate rules and regulations relating to the administration of this act but not inconsistent therewith.

Rules and
regulations.

Section 5. **Disposition of excess over \$7,500.00.** All moneys, investments and credits in excess of seven thousand five hundred dollars (\$7,500.00) remaining in the state treasury to the credit of the commission in the earmarked revenue fund at the close of the license year on December 31st of each year, after the payment of all expenses for that year, shall on or before the fifteenth day of the succeeding month be determined by the commission and shall be transferred from the earmarked revenue fund to the general fund to become available for general governmental purposes.

Transfer of
excess funds.

Section 6. **Licenses—applicants for licenses.**

(a) Licenses shall be granted only to persons who are deemed by the commission to be of good repute and competent to transact the business of a broker or salesman in such manner as to safeguard the interests of the public.

Licenses granted.

(b) Each applicant for a broker's license shall be a citizen of the United States, at least twenty-one (21) years of age, and must file an application for license with the commission. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency. Every officer of a corporation acting as a broker and every member of an association or partnership acting as a broker shall obtain a broker's license.

Qualifications—
broker's license.

Qualifications—
salesman's license.

(c) Each applicant for a salesman's license shall be at least twenty-one (21) years of age and must file an application for license with the commission. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The commission shall issue to each licensed broker and to each licensed salesman a license and a pocket card in such form and size as the commission shall prescribe.

Section 7. Written examination—contents—time and place—exemptions.

Written
examination
of applicants.

(a) In addition to proof of honesty, trustworthiness and good reputation, each applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the commission. The examination shall be given at least once each six months and at such places within the state as the commission shall prescribe. The examination for a salesman's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of this act. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license. An applicant who has failed twice in succession to pass the same class of examination shall be ineligible for a further examination until six months have passed; provided, however, that any resident of the state of Montana who was at the effective date of this act actively engaged in the real estate business as a licensed broker in this state may, upon complying with the other requirements for a broker's license, obtain a broker's license without examination if application therefor is made within ninety (90) days after the effective date of this act; and provided further that any person who has acted as a licensed salesman upon complying with the other requirements for a salesman's license may obtain a salesman's license without an examination if application is made within ninety (90) days after the effective date of this act.

Time—place.

Required subjects.

Exceptions.

Section 8. License—issuance—suspension—revocation. The commission shall have the full power to regulate the issuance of licenses and to revoke or suspend licenses issued under the provisions of this act.

Power to
regulate licenses.

Section 9. License—delivery—display—pocket card. The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each real estate salesman shall be delivered or mailed to the real estate broker by whom the real estate salesman is employed, and shall be kept in the custody and control of such broker. It shall be the duty of each broker to display his own license conspicuously in his place of business. The commission shall annually prepare and deliver a pocket card certifying that the person whose name appears thereon is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and including, on real estate salesman's cards only, the name and address of the broker employing such real estate salesman.

Form—delivery—
custody.

Duty to display.

Pocket cards.

Section 10. Bond of brokers and salesman. No license shall be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the commission in the sum of ten thousand dollars (\$10,000.00), running to the state of Montana and executed by a surety company duly authorized to do business in the state of Montana. The bond shall be in a form approved by the commission and conditioned that the applicant shall conduct his business and himself in accordance with the provisions of this act. All bonds given by licensees under the provisions of this act, after approval, shall be filed and held in the office of the commission.

Bond must
be filed.

Section 11. Fees—when due. To pay the expense of the maintenance and operation of the office of the commission and the enforcement of this act, a fee not to exceed the amount indicated below shall be charged by the commission and paid into the earmarked revenue fund for each of the following:

Fee schedule—
deposit.

(a) For each examination, a fee not to exceed fifty dollars (\$50.00).

(b) For each original resident broker's license issued, a fee not to exceed fifty dollars (\$50.00).

(c) For each annual renewal of a resident broker's license, a fee not to exceed fifty dollars (\$50.00).

(d) For each original nonresident broker's license issued, a fee not to exceed fifty dollars (\$50.00).

(e) For each annual renewal of a nonresident broker's license, a fee not to exceed fifty dollars (\$50.00).

(f) For each original salesman's license issued, a fee not to exceed twenty-five dollars (\$25.00).

(g) For each annual renewal of a salesman's license, a fee not to exceed twenty-five dollars (\$25.00).

(h) For each additional office or place of business, an annual fee not to exceed twenty-five dollars (\$25.00).

(i) For each change of place of business or change of employer or contractual associate, a fee not to exceed twenty-five dollars (\$25.00).

(j) For each duplicate license, where the original license is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars (\$10.00).

(k) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars (\$10.00).

The commission shall at its first meeting prepare a schedule of fees within the limits set by this section. The commission may from time to time revise such schedule of fees within the limits herein provided; provided, however, a fee once set for any one of the items herein for which a fee is charged cannot be increased or decreased until at least one year has passed since the fee for that particular item was last increased or decreased.

All annual fees shall be due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 will automatically cancel such license, but otherwise said license will remain in full force and effect continuously from the date of issuance, unless suspended or revoked by said commission for just cause.

Section 12. Requirements for office—employment of salesmen—issuance and display of license.

(a) Each resident licensed broker shall maintain a fixed office within this state. The original license of the broker and the original license of each salesman in the employ of or under contract with such broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license. In case of removal from the designated address, the licensee shall notify the commission before such removal or within ten days thereafter, designating the new location of this office, and paying the required fee, whereupon a license for the new location for the unexpired period shall issue.

Broker shall maintain fixed office.

Notice of change.

(b) A salesman shall not be employed by or under contract to more than one licensed broker nor shall he perform services for any broker other than the one designated upon the license issued to the salesman. Whenever a licensed salesman desires to change his employment or contractual relationship from one licensed broker to another, he shall notify the commission promptly in writing of the facts attendant thereon, pay the required fee, and return his license and pocket card, and a new license and pocket card shall thereupon be issued. No salesman shall directly or indirectly work for or with a broker until he has been issued a license to work for or with that broker. Upon termination of a salesman's employment or contractual relationship he shall surrender his license and pocket card to his broker, who shall return them to the commission for cancellation.

Salesman limited to one broker.

Notice of change.

Surrender on termination.

(c) Only one license shall be issued to any salesman to be in effect at one time.

One license limit.

Section 13. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.

(a) It is unlawful for any licensed broker to employ or compensate directly or indirectly any person for performing any of the acts regulated by this act who is not a licensed broker or licensed salesman; provided, however, that a licensed broker may pay a commission to a licensed broker of another state so long as such nonresident broker has not conducted and does not conduct in this state any service for which a fee, compensation or

Unlawful employment.

Revision of fees.

Annual fees due in December.

commission is paid; provided, further, this subsection shall not limit the provisions of the subsection following.

Nonresident
broker.

(b) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in another state and who has been duly licensed in such other state to conduct such business in that state, may obtain a license as a broker in this state by complying with all provisions of this act; provided, however, that this section shall apply only to those brokers of other states which offer the same privileges to the licensed brokers of this state. Such nonresident licensee need not maintain a place of business within this state. The commission may license such nonresident broker without examination, provided that he files with the said commission a duly authorized or certified copy of the license issued to such nonresident for the conducting of such business in any other state, and by paying to the said commission the same license fee as is herein provided for the obtaining of a broker's license in this state. The commission may in its discretion refuse to issue a broker's license to an applicant who is not a resident of this state.

Consent to
jurisdiction and
service of process.

(c) Every nonresident broker shall file an irrevocable written consent that legal actions arising out of any commenced or completed transaction may be commenced against such nonresident broker in any county of this state which may be appropriate and designated by section 93-2904; and such consent shall provide that service of summons in any such action may be served upon the chairman of the commission, for and on behalf of said nonresident broker, and such service shall be held to be sufficient to give the court jurisdiction over such nonresident broker and his salesman or agent conducting any such transaction in any county. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. Any service of process or pleading made upon the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address of the nonresident broker against whom said process or pleading is directed. In any action in which service of process or pleading is made upon the commission no

Method of service.

Default.

default shall be taken except upon certification of the chairman of the commission that a copy of said process or pleading was mailed to the defendant as herein provided. In actions in which service of process or pleading is made upon the commission, defaults may be entered and default judgments taken in the manner provided as in the case where publication of summons is had; provided the method of service of process or pleadings provided for by this section shall in no way limit section 93-2702, Revised Codes of Montana, 1947. (Rule 4, M.R. Civ. P.)

Section 14. **Grounds for refusal—suspension or revocation of license.** The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any real estate broker or any real estate salesman and shall have the power to revoke or suspend any license issued under this act whenever the broker or salesman has been found guilty by a majority of the commission of any of the following practices:

Commission
may refuse,
suspend, or revoke
license for cause.

Unlawful
practices.

Enumerated.

(1) Intentionally misleading, untruthful or inaccurate advertising, whether printed or by radio, display or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies or services of the business conducted;

(2) Making any false promises of a character likely to influence, persuade or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using any other trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit any money coming into his possession belonging to others;

(6) Accepting, giving or charging any undisclosed commission, rebate or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and undisclosed principal in any transaction;

(8) Guaranteeing or authorizing or permitting any person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on any terms other than those authorized by the owner or his authorized agent;

(10) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent upon the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange or lease of real property directly with an owner or lessor if he knows that such owner has a written outstanding contract in connection with such property, granting an exclusive agency to another broker;

(13) Soliciting, selling or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of any written instrument to any party executing the same at the time of its execution;

(16) Paying a commission or compensation to any person for performing the services of a real estate broker or real estate salesman who has not first secured his license under this act;

(17) Intentionally violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, any deposit money or other money entrusted to him by any person with him as a representative of his registered broker;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman.

(20) Conviction of a felony.

Section 15. Hearings—procedures.

(a) Before the commission shall deny any application for a license or revoke or suspend a license, the applicant or licensee shall be entitled to a hearing. The hearing shall be held after twenty (20) days notice to the applicant or licensee. In case of filing of charges against a licensee, a copy of such charges shall be attached to the notice and be sent by registered mail to the last known address of the licensee. The licensee shall file an answer to the charges, in triplicate, within twenty (20) days after notice has been mailed by the commission. The commission shall thereupon notify the parties to the dispute of the time and place of hearing, which shall be held in accordance with rules promulgated by the commission and in conformity with the laws of this state. If the applicant or license holder is a salesman, the commission shall also notify the broker employing him or in whose employ he seeks to enter by mailing such a notice to the broker's last known business address.

(b) The applicant or licensee shall have full authority to be heard in person or by counsel before the commission in reference to the denial of application on charges filed against him.

(c) In the preparation and conduct of such hearing, the chairman shall have power to issue and sign subpoenas to require the attendance and testimony of any witness and the production of any papers or books. He may administer oaths, examine the witnesses and take any evidence he deems pertinent to the determination of the charges. Any witness so subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the district courts of this state in civil actions, but the payment of such fees and

Hearing.

Notice of charges.

Answer.

Notice of hearing.

Authority to be heard.

Powers of chairman—conduct of hearing.

Subpoena—witness fees and mileage.

mileage must be paid out of and kept within the limits of the funds created from such license fees. The party against whom such charges may be filed shall have the right to obtain from the chairman a subpoena for any witnesses whom he may desire at such hearing. The chairman shall issue such subpoenas as desired by the party against whom the charges have been filed. Depositions may also be taken and used as in civil court cases in the district courts.

Depositions.

Enforcement.

(d) Where, in any proceeding before the commission, any witness shall fail or refuse to attend upon the subpoena issued, or shall refuse to testify, or shall refuse to produce any records or documents, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony, and the production of the documents and records may be enforced in the same manner as courts of competent jurisdiction enforce the attendance, testimony of witnesses and production of records in civil cases in the courts of this state.

Section 16. Appeal to court—supersedeas—bond.

Appeal to district court.

(a) Any person aggrieved shall have the right of appeal from any adverse ruling, order or decision of the commission to the district court of the county in which he resides or maintains his business, or in the county where the hearing was held, within thirty (30) days from the service of notice of the action of the commission upon the parties thereto.

Notice of appeal—writ of certiorari.

(b) Notice of appeal shall be filed in the office of the clerk of the court, which shall issue a writ of certiorari directed to the commission, commanding it, within ten (10) days after service thereof, to certify and file with the court a certified copy of the records of the case in which the appeal has been taken, including all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings, conclusions, and orders therein. The appeal shall be heard in due course without a jury by the court, which shall review the record, and after hearing thereon, make its determination of the cause.

Hearing without jury.

Appeal bond.

(c) Any person taking an appeal to the district court shall post a bond in the amount of three hundred dollars

(\$300.00) for the payment of any costs which may be taxed against him.

(d) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission upon conditions determined by the court. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

Additional evidence.

(e) An appeal may be taken to the supreme court from a district court by the commission or by any person aggrieved from an adverse ruling, order or decision of the district court. Such appeal shall be taken within sixty (60) days after the order is made and entered in the minutes of the court filed with the clerk. The method and procedure of taking an appeal, together with the amount of the undertaking or deposit on appeal, shall be governed by chapter 80 of title 93, Revised Codes of Montana, 1947.

Appeal to supreme court.

(f) Any order, rule or decision of the commission shall not take effect until after the time for appeal has expired. In the event an appeal is taken by a licensee or applicant, the appeal shall not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

Stay of proceedings.

Section 17. Penalties—legal actions.

Violations—penalties.

(a) Any person acting as a broker or salesman without first obtaining a license shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) or by imprisonment for a term not to exceed ninety (90) days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000.00)

or by imprisonment for a term not to exceed six (6) months, or both.

Civil actions—
penalty.

(b) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

Right to sue—
attorney's fees
allowed.

(c) Any person sustaining damages by failure of a real estate broker or real estate salesman to comply with the provisions of this act, shall have the right to commence an action in his own name against the real estate broker and his surety, or the real estate salesman and his surety, or both the broker and any salesman employed directly or indirectly by such broker and their respective sureties, for the recovery of any damages sustained as the result of any act specified in section 14 herein or as a result of the failure of the real estate broker or real estate salesman to comply with the provisions of this act. In all cases where suit is brought against the broker or the salesman, and his surety, the court shall, upon entering judgment for the plaintiff, allow as a part of the costs of suit a reasonable amount as attorney's fees.

Collection
from bonds.

All penalties provided for by this section may be collected from the broker's and salesman's bonds provided by section 10 of this act.

Proof of license
required
to bring action.

Section 18. **Action for compensation.** Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action or claim arose.

Members of
company must
procure licenses.

Section 19. **Members of company—license required.** Every member or officer of each partnership, association

or corporation, who actively participates in the real estate brokerage business of such partnership, association or corporation, shall obtain a license as a real estate broker and every employee, who acts as a salesman for such partnership, association or corporation, shall hold a license as a real estate salesman.

Section 20. Real estate meetings and clinics open to all licensees.

(a) The commission is authorized to conduct, hold or assist in conducting or holding real estate clinics, meetings, courses or institutes and to incur the necessary expenses in connection therewith.

Real estate clinics.

(b) The commission is authorized to assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

Education.

Section 21. **Attorney for commission.** The attorney general of the state shall render to the commission opinions on all questions of law relating to the interpretation of this act or arising in the administration thereof. The attorney general shall further act as attorney for the said commission in all actions and proceedings brought by or against it under or pursuant to any of the provisions of this act; provided, all fees and expenses of the attorney general acting in such capacity shall be paid out of commission moneys in the earmarked revenue fund.

Attorney for
commission.

Payment of fees
and expenses.

Section 22. **Publication of directory.** The commission shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data as the commission may determine to be in the interest of real estate licensees and the public.

Annual directory.

Section 23. **Unconstitutionality—severability.** If any provision of this act is held invalid, that provision shall be deemed to be excised from this act and the invalidity thereof shall not affect any of the other provisions of this act. If the application of any provision of this act to any person or circumstance is held invalid, it shall not affect the application of such provision to such persons or circumstances other than those to which it is held invalid.

Severability.

Repealing clause. Section 24. **Repealing clause.** This act expressly repeals sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by chapter 129, laws of 1957, chapter 130, laws of 1957, chapter 131, laws of 1957 and chapter 132, laws of 1957.

Construction. Section 25. **No repeal of section 94-1822.** Nothing contained herein shall be construed to amend, modify or repeal section 94-1822 of the Revised Codes of Montana of 1947. This act shall be construed to be supplemental to said section 94-1822.

Effective immediately. Section 26. **Effective date.** This act shall be in full force and effect from and after its passage and approval.

Repealing clause. Section 27. All acts and parts of acts in conflict herewith are hereby repealed.

Approved March 9, 1963.

CHAPTER 251

An Act to Amend Section 75-1630, R. C. M. 1947, Relating to School Attendance in Districts Other Than That of Residence and Providing for Disapproval if There Is Not Sufficient Room.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause. Section 1. Section 75-1630, R. C. M. 1947, is amended to read as follows:

School attendance outside place of residence. "75-1630. **Transfer of funds.** Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the state of Montana, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in which the children reside. Permission must be granted for such attendance in another district within or without the county of such children's residence when the following conditions exist:

Written permission—conditions.

1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.

2. When a child resides more than three (3) miles distance from a public elementary school within his own district or county and no transportation is furnished by the home district or county to such school.

3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.

Such distances mentioned above shall be measured from the point where the private family dwelling house is situated to the schoolhouse by the shortest traveled route.

4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a parent must move to town to provide high school education for his children.

5. When the county superintendent of schools of the county where the child resides, for any other reason than stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program.

If the board of trustees of the district to be attended shall find that, due to insufficient room and overcrowding the accreditation of the receiving school in the ensuing school year would be adversely affected by acceptance of a transfer pupil from another school district, the board may disapprove the attendance provided it mails written notice of disapproval to the parents or guardian of the

Board may disapprove attendance.